



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS-2022-0006]

RIN 0750-AL63

Defense Federal Acquisition Regulation Supplement: New

Qualifying Country-Lithuania (DFARS Case 2022-D012)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Lithuania as a qualifying country.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Monica Wideman, telephone 571-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to add Lithuania as a qualifying country. A qualifying country is a country that has a reciprocal defense procurement agreement or memorandum of understanding with the United States in which both countries agree to remove discriminatory barriers to purchases of supplies produced in the other country or services performed by sources

of the other country. The agreement or memorandum must comply, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776), which addresses reports and certifications to Congress on military exports, and with 10 U.S.C. 2457, which addresses standardization of equipment with North Atlantic Treaty Organization members. For purposes of the Buy American Act (DFARS 225.1) and the Balance of Payments Program (DFARS 225.75), supplies and components produced in qualifying countries are treated the same as supplies and components produced in the United States.

On December 13, 2021, the Secretary of Defense and the Ministry of National Defense of the Republic of Lithuania signed a Reciprocal Defense Procurement Agreement. The Secretary of Defense also signed, on that day, a determination and findings that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of articles, materials, and supplies produced or manufactured in the Republic of Lithuania. The Reciprocal Defense Procurement Agreement removes discriminatory barriers to procurements of supplies and services produced by industrial enterprises of Lithuania to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations. This agreement does not cover construction or construction material. Lithuania is already a designated country under the World Trade Organization Government Procurement Agreement.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and does not have a significant cost or administrative impact on contractors or offerors. Lithuania is added to the list of 27 other countries that have similar reciprocal defense procurement agreements with DoD. These requirements affect only the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products Including Commercially Available Off-the-Shelf (COTS) Items, and for Commercial Services

This rule only updates the list of qualifying countries in the DFARS by adding the newly qualifying country of Lithuania. The

definition of "qualifying country" is updated in each of the following clauses: DFARS 252.225-7001, Buy American and Balance of Payments Program; DFARS 252.225-7002, Qualifying Country Sources as Subcontractors; DFARS 252.225-7012, Preference for Certain Domestic Commodities; DFARS 252.225-7017, Photovoltaic Devices; DFARS 252.225-7021, Trade Agreements; and DFARS 252.225-7036, Buy American-Free Trade Agreements-Balance of Payments Program. However, this rule does not change the clause prescriptions or applicability to contracts at or below the SAT, for commercial products including COTS items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management and Budget (OMB) Control Number 0704-0229, entitled "DFARS Part 225, Foreign Acquisition."

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.003 [Amended]

2. Amend section 225.003 in the definition of “Qualifying country” by adding, in alphabetical order, the country of “Lithuania”.

225.872-1 [Amended]

3. Amend section 225.872-1 in paragraph (a) by adding, in alphabetical order, the country of “Lithuania”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 252.225-7001 by—
 - a. In the clause heading, removing the date “(DEC 2017)” and adding “(MAR 2022)” in its place;
 - b. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”; and
 - c. In Alternate I—
 - i. In the clause heading, removing the date “(DEC 2017)” and adding “(MAR 2022)” in its place; and
 - ii. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”.

5. Amend section 225.225-7002 by—

- a. Revising the section heading and date of the clause; and
- b. In the paragraph (a), in the definition of "Qualifying country", adding, in alphabetical order, the country of "Lithuania".

The revisions read as follows:

252.225-7002 Qualifying Country Sources as Subcontractors.

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Qualifying Country Sources as Subcontractors (MAR 2022)

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6. Amend section 252.225-7012 by—

- a. Revising the section heading and date of the clause; and
- b. In the paragraph (a), in the definition of "Qualifying country", adding, in alphabetical order, the country of "Lithuania".

The revisions read as follows:

252.225-7012 Preference for Certain Domestic Commodities.

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Preference for Certain Domestic Commodities (MAR 2022)

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252.225-7017 [Amended]

7. Amend section 252.225-7017 by—

- a. In the clause heading, removing the date "(JAN 2022)" and adding "(MAR 2022)" in its place; and
- b. In the paragraph (a), in the definition of "Qualifying country", adding, in alphabetical order, the country of "Lithuania".

252.225-7021 [Amended]

8. Amend section 252.225-7021 by—

- a. In the clause heading, removing “(SEP 2019)” and adding “(MAR 2022)” in its place;
- b. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”; and
- c. In Alternate II—
 - i. In the clause heading, removing the date of “(SEP 2019)” and adding “(MAR 2022)” in its place; and
 - ii. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”.

252.225-7036 [Amended]

9. Amend section 252.225-7036 by—

- a. In the clause heading, removing the date “(DEC 2017)” and adding “(MAR 2022)” in its place;
- b. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”;
- c. In Alternate I—
 - i. In the clause heading, removing the clause date of “(DEC 2017)” and adding “(MAR 2022)” in its place; and
 - ii. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”;

d. In Alternate II—

i. In the clause heading, removing the clause date of “(DEC 2017)” and adding “(MAR 2022)” in its place; and

ii. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”;

e. In Alternate III—

i. In the clause heading, removing the clause date of “(DEC 2017)” and adding “(MAR 2022)” in its place; and

ii. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”;

f. In Alternate IV—

i. In the clause heading, removing the clause date of “(DEC 2017)” and adding “(MAR 2022)” in its place; and

ii. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”; and

g. In Alternate V—

i. In the clause heading, removing the clause date of “(DEC 2017)” and adding “(MAR 2022)” in its place; and

ii. In the paragraph (a), in the definition of “Qualifying country”, adding, in alphabetical order, the country of “Lithuania”.